72-543

No. .....

Supreme Court
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MICHAEL RODAK, JR., CLE

IN THE

Supreme Court of the United States

October Term, 1972

FANNIE SMITH, ADMINISTRATRIX
OF THE ESTATE OF
JOSEPH SMITH, DECEASED, Petitioner,

vs.

OLSEN & UGELSTAD, Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOHN ARTHUR HAMILTON
FOSTER, MEADOWS & BALLARD
JOHN L. FOSTER
3266 Penobscot Building
Detroit, Michigan 48226
Telephone: (313) 961-3234

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Olsen & Ugelstad, respondent, prays that the Petition for Writ of Certiorari sought in this case be denied.

QUESTIONS PRESENTED
STATEMENT OF THE CASE

For the purpose of this Petition for Writ of Certiorari only, where, as respondent understands it, the question before the Court is whether the petition should be granted or denied, respondent accepts the Questions Presented and the Statement of the Case of petitioner. Still it appears the petition should be denied.

ARGUMENT

A.

There is now before the President for signature or pocket veto a bill (S 2318) which had the support of both labor and management in the House and Senate which abolishes the doctrine of unseaworthiness in longshoremen's cases in return for doubling the benefits under the Longshoremen and Harbor Workers' Compensation Act. Whether this bill is signed (as radio reports say) or not it plainly appears that the matter of the warranty of seaworthiness for longshoremen cases is in the mind of the Congress for sharp change in the present bill or other change in some future bill more acceptable to the President.

The sole purpose of this petition is "*** for this Court to now clarify its interpretation of unseaworthiness". (page 5 of the Petition) Under the circumstances, this would be an exercise in futility.

Certainly it can no longer be said that the questions presented here are of any great interest to the profession generally or that if there be any conflict within the Circuits, which is denied, such conflict needs resolution by this Court at this time.

B.

Many times even where the issues presented are not of interest to the profession generally, they are of interest to the parties. However, in this case the District Court found that no damages were proved because death was instantaneous and no loss of consortium existed in law or fact and petitioner lost no reasonably expected contribution. While the Court of Appeals did not review these findings (see footnote 2 of its Opinion) they are plainly the truth and

apt to be re-found on any re-trial. Hence the issues here are not even of interest to the parties themselves.

Indeed, it appears that this particular widow is better off drawing her benefits under the Longshoremen and Harbor Workers' Compensation Act until death or remarriage than in processing this petition.

RELIEF REQUESTED

Accordingly, respondent respectfully prays this petition be denied.

Respectfully submitted,

FOSTER, MEADOWS & BALLARD
By: /s/ JOHN L. FOSTER
3266 Penobscot Building
Detroit, Michigan 48226
Telephone: (313) 961-3234
Attorneys for Respondent

DATED: OCTOBER 31, 1972